

STATE OF CALIFORNIA  
FISH AND GAME COMMISSION  
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Sections 1.91, 27.60, 28.26, 28.27, 28.28, 28.29, 28.54, 28.55, 28.56, 28.58,  
28.90, 701;  
Amend and Renumber Sections 27.82 and 27.83;  
Repeal Sections 27.20, 27.25, 27.30, 27.35, 27.40, 27.42, 27.45, 27.50, 27.51, 27.52,  
27.53, 27.67;  
Add Sections 27.20, 27.25, 27.30, 27.35, 27.40, 27.45, 27.50, 27.51, 28.48, 28.49,  
28.51, 28.52, 28.53, 28.57;  
Title 14, California Code of Regulations (CCR)  
Re: Recreational Groundfish Fishing

- I. Date of Initial Statement of Reasons: August 18, 2006
- II. Date of Pre-Adoption Statement of Reasons: October 16, 2006
- III. Date of Final Statement of Reasons: November 20, 2006
- IV. Dates and Locations of Scheduled Hearings:
  - (a) Notice Hearing: Date: August 4, 2006  
Location: Sacramento, CA
  - (b) Discussion Hearing: Date: October 6, 2006  
Location: San Diego, CA
  - (c) Adoption Hearing: Date: November 3, 2006  
Location: Redding, CA
- V. Update:

At the November 3, 2006 adoption hearing, the Commission approved the proposed regulatory amendments to the recreational groundfish fishing regulations. Additionally, the Commission selected to re-affirm the exceptions to the closed seasons for shore-based anglers and divers who use spearfishing gear, allowing them year-round fishing opportunities for groundfish species.

*Modifications to the Regulatory Text*

Two minor modifications have been made to the originally proposed language of the Initial Statement of Reasons, as described below. These items were

previously included with the Pre-Adoption Statement of Reasons dated October 16, 2006. The two changes are as follows:

1. Proposed new sections 27.25, 27.30, 27.35, 27.40, 27.45, and 27.50 specify area-specific regulations for each of six Groundfish Management Areas. In each of these sections, subsection (b) specifies the fishing seasons and depth constraints that apply within each area, while subsection (c) of each section provides some special exceptions to these seasons and depth constraints. In order to make more clear to the reader that exceptions to subsection (b) exist in regulations that follow, the phrase "except as provided in subsection (c) below" was added to the language in subsection (b) of each of these sections. The additional phrase should add to clarity and understanding and reduce confusion on the part of the reader.

2. Proposed new sections 27.25, 27.30, 27.35, 27.40, 27.45, 27.50 and 28.48 specify the allowable fishing gear for "other flatfish", including Pacific sanddabs, when anglers are fishing in times, areas or depths that are otherwise closed to groundfish fishing. The noticed regulatory text states that only hooks of size No. 2 or smaller may be used in these situations. The text then provides a definition for a No. 2 hook. In order to be consistent with language used in the inland sportfishing regulations of Title 14 to describe hook sizes, the regulatory text was modified to read that "A No. 2 hook means a fishing hook with a gap not greater than 7/16 inch between the hook point and the shank." Conversely, the presently-noticed regulatory text states that the gap size may be not more than 7/16 inch "at its closest point". The two definitions differ only in the words used, but there is no practical difference between them in the field. The Department therefore believes the change to be only technical in nature, and therefore not substantive.

The Department believes each of the two items above is non-substantive and makes only a technical or clarifying change, in the manner or manners described.

A third minor change was made to the originally proposed language of the Initial Statement of Reasons, as described below. This change was made after submission of the Pre-Adoption Statement of Reasons.

3. The proposed regulatory text in sections 28.26, 28.27, 28.28, 28.29, 28.48, 28.49, 28.51, 28.52, 28.53, 28.54, 28.55, 28.56, 28.57 and 28.58, reading "Take and possession is authorized only as follows, and is otherwise unlawful:" is replaced with the following text: "Take and possession is authorized as follows:"

The reason for this change is to allow the exceptions to the closed seasons provided for shore-based anglers and divers contained in sections 27.20 through 27.50 to apply as intended. The present language in sections 28.26, 28.27, 28.28, 28.29, 28.48, 28.49, 28.51, 28.52, 28.53, 28.54, 28.55, 28.56, 28.57 and

28.58 could be misinterpreted by the reader to mean that no exceptions to the closed seasons exist, yet meanwhile they are expressly provided for in sections 27.20 through 27.50. At the adoption hearing, the Commission re-affirmed that the shore-based and diver exceptions shall continue to apply. The proposed clarifying change should alleviate any potential confusion on this point.

The Department believes the third item above is also non-substantive and makes only a technical or clarifying change, in the manner described.

VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting those Considerations:

**Comments provided on the shore-based and spear diving exceptions**

The Commission received 48 written comments and four oral comments in support of continuing the exceptions which allow shore-based angling and spearfishing for groundfish during all 12 months of the year, while boat-based anglers are subject to seasonal groundfish closures of 2 to 6 months in duration, depending on the location.

	<b>Name</b>	<b>Affiliation</b>	<b>Date</b>	<b>Comments</b>
1	Ron del Mundo	RFA/Spearfisher/Diver	9/22/06	A, B, C, D
2	Jean Lundeen	Spearfisher/Diver	9/22/06	A, H
3	Edward Xiao	Shore Angler/Spearfisher	9/22/06	A, B, C, D
4	Dave Wesendunk	Shore Angler/Spearfisher	9/22/06	A
5	Milo Vukovich	Shore Angler/Spearfisher	9/22/06	A, B, H
6	Marc Mullaney	Shore Angler/Spearfisher	9/22/06	A, B, C
7	Frank Schweininger	RFA/Shore Angler/Spearfisher	9/24/06	A, B, C, D
8	Dennis Haussler	RFA/Freediver	9/24/06	A, B, C, D
9	Duanne Shoemake	RFA/Shore Angler/Spearfisher	9/25/06	A, B, C, D
10	Ken Jones	President, United Pier & Shore Anglers of CA	9/25/06	A, B, C, D, E
11	James Liu	Secretary, United Pier & Shore Anglers of CA	9/25/06	A, B, C, D, E
12	Dan Silveira	Freediver	9/25/06	A, B, F, H
13	Larry Ankuda	Shore Angler/Spearfisher	9/26/06	A, B, D
14	Paul Verveniotis	Spearfisher/Diver	9/26/06	A, D, K
15	Mark Weitz	Spearfisher/Diver	9/26/06	A, B, D
16	Sylvie C. Stulic	Spearfisher/Diver	9/26/06	A, B, D
17	Josh Kim	Concerned Citizen	9/26/06	A, B, C, D
18	Sam Bloc	Concerned Citizen	9/26/06	A, B, C, D

19	Joe Wood	Concerned Citizen	9/26/06	A, B, C, D
20	Eugene J. Porter	RFA/Shore Angler/Spearfisher	9/26/06	A, B, C, D
21	Brock Kennedy	President, Lockheed Scuba Knights	9/26/06	A, B, C, D
22	Eric Schaller	RFA/Shore Angler	9/26/06	A, B, C, D
23	Mario Korf	Spearfisher/Diver	9/26/06	A, B, C, G
24	Dennis Nasont	San Jose Flipper Dippers/Diver/CenCal	9/26/06	A, B, C, D, H
25	Thomas Fiene	Spearfisher/Diver	9/26/06	A, B, C, I
26	David W. Sims	Spearfisher/Diver	9/26/06	A, B, C, G
27	Jeff Fornes	RFA/Shore Angler/Spearfisher	9/27/06	A, B, C, D
28	Brian D. Mathews	Shore Angler/Spearfisher	9/27/06	A, D, G
29	Gene Kramer	Shore Angler/Diver	9/27/06	A, C, D
30	Kevin Munday	RFA/Spearfisher	9/27/06	A, B, C, D
31	John Hayes	Northern California Skin Diving Club	9/27/06	A, B, C, D
32	Dan Rujan	Shore Angler/Spearfisher	9/27/06	A, B, C, D
33	Daren Smith	RFA/Shore Angler/Spearfisher	9/27/06	A, B, C, D
34	Bob Humphrey	Central California Council of Dive Clubs (CenCal) Director of Marine Resources	9/27/06	A, B, C, D, G
35	Marc Sullivan	Freediver	9/27/06	A
36	Jason Kim	Concerned Citizen	9/27/06	A, B, C, D
37	Bob Bachmann	RFA/Shore Angler/Spearfisher	9/27/06	A, B, C, D
38	Bev Bachmann	Shore Angler/Spearfisher	9/27/06	A, B, C, D, G
39	Trent L. Davis	Shore Angler/Spearfisher	9/28/06	A, B, C, D, G, J
40	Justin Smith	Spearfisher/Diver	9/28/06	A, B
41	Hunter Smith	Spearfisher/Diver	9/29/06	A, B
42	Josh Simonson	RFA/Shore Angler/Spearfisher	9/29/06	A, B, C, D
43	Melody Cooper Gross	Spearfisher/Freediver	9/29/06	A, B, C
44	Richard Shafer	Shore Angler/Spearfisher	10/1/06	A, B, C, D
45	Cheryl & David Babineau	Alibi Custom Rods	10/1/06	A, B, C, D
46	Aaron Lauer	Spearfisher/Freediver	10/2/06	A, C

47	Doug Jung	Shore Angler/Freediver	10/4/06	A, C, D, H, L
48	Jim Martin	Recreational Fishing Alliance (RFA), Regional Director	9/22/06 (and oral testimony 10/6/06)	A, B, C, D
49	Paul Weakland	Interested Party	11/03/06 adoption hearing (oral testimony)	A, M
50	Tom Raftican	United Anglers of Southern California	11/03/06 adoption hearing (oral testimony)	A, N
51	Doug Louvell	Interested Party	11/03/06 adoption hearing (oral testimony)	A, O

Below is a summary of the issues raised in the written comment letters and oral testimony, and the reasons the author/speaker supports continuation of the shore-based and spearfishing exceptions to the seasonal groundfish closures. The Department's response to each of these issues is provided. To associate individuals with a comment, refer to their number (1-51) listed above.

- A. Comment: *We support the provision for year-round angling and spear fishing for rockfish.*

Source: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and 51.

Response: Support noted.

- B. Comment: *There is no biological reason for any seasonal ban on spearfishing or shore angling for groundfish. The seasonal closures implemented by the PFMC reduce impacts on overfished, deep-water species like canary rockfish. Spear anglers can be selective in the species they take, and can therefore fish without impacting overfished stocks.*

Source: 1, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, and 48.

Response: The PFMC establishes recreational fishing seasons for groundfish in order to keep catches within prescribed optimum yield (OY) levels. Shore-based anglers, boat-based anglers, and spear fishermen all fish against the same OY levels and recreational harvest targets. Before each year begins, the Department and stakeholders evaluate catch information from prior years to determine the length of the fishing season in each area considering the allowable harvest levels. For 2007 and 2008, in most areas of the state the fishing seasons will be longer and/or extend to deeper depths than in 2006. These extensions resulted from new stock assessments that were favorable for some nearshore species.

All groundfish have both an OY and an allowable biological catch (ABC) level established by the PFMC. While OYs are usually lower than ABCs, the PFMC has a policy of managing groundfish stocks to the OY rather than the ABC. For species that are designated as overfished, if catches exceed the ABC, stock recovery could be jeopardized. For other species, fishing at levels beyond the ABC could result in collapse.

While shore fishing and spearfishing arguably may have lesser impacts on species of shelf rockfish that are declared overfished, shore fishing and spearfishing are popular methods of take for cabezon. The most recent cabezon stock assessment in 2005 suggests there is need to be precautionary with management of this species. While the PFMC did not declare cabezon overfished, the California population north of Point Conception was estimated to be at only 40 percent of its unfished biomass, and only 28 percent of its unfished biomass for the population south of Point Conception. Since 2000, about 25 percent of the recreational cabezon catch has come from shore-based fishing activities.

In order to accommodate a 12-month shore and spearfishing season for cabezon and other groundfish species, there is an increased chance that there will be a need for in-season management action to close fisheries prior to the end of the season, once the specified harvest levels are reached.

It also should be noted that in the case of lingcod, there is a 4-month seasonal closure from December through March which coincides with the lingcod spawning season. The shore-based and spearfishing exemptions cannot be used to take lingcod take during those months.

- C. Comment: *Shore anglers do not catch many fish per unit of effort, and neither do divers. Spearfishing accounts for less than 1% of the total recreational take of federally managed groundfish. Shore fishing and diving represents over 3 million angler days on the water in 2005 with zero impact on overfished federally managed species like canary and yelloweye rockfish. Shore anglers and divers take an infinitesimal amount of regulated species compared to all other methods.*

Source: 1, 3, 6, 7, 8, 9, 10, 11, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 42, 43, 44, 45, 46, 47, and 48.

Response: All groundfish have an OY, and are thus considered “regulated”. The Department agrees that for rockfish, the shore and diving modes contribute only a minor amount to the total catch. However, that is not necessarily the case for all species of groundfish. As described in Response B above, shore-based groundfish fishing activities result in approximately 25 percent of the cabezon catch. For greenlings, shore-based fishing activities account for approximately 47 percent of the catch.

- D. Comment: *Shore angling year-round is about providing fishing opportunities for young families with kids, economically disadvantaged people and the entry-level angler. It's the gateway to all saltwater recreational fishing.*

Source: 1, 3, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 42, 44, 45, 47, and 48.

Response: Beginning in 2001, the Commission made the decision to provide year-round groundfish fishing opportunities from shore despite the need to constrain fishing activities in deeper water to limit interaction with overfished species of shelf rockfish. In doing so, the Commission supported providing continued opportunity to the shore-based and diving sectors of the recreational fishing community, in light of the reasoning provided by these constituents. However, in 2001, the situation was somewhat different in that the primary biological concern was with species of shelf rockfish, which are less vulnerable to fishing activities from shore. Today, there are concerns with the potential for overfishing nearshore stocks, particularly cabezon, which are vulnerable to shore-based fishing and diving activities. Therefore, the Department is requesting the Commission re-affirm its support for the exceptions, in light of the changed circumstances.

- E. Comment: *Rather than closed seasons, consider changes to regulations that limit the type of fishing gear that may be used (e.g. circle hooks, short leaders, etc.) and/or reduced bag limits.*

Source: 10 and 11.

Response: In order to keep groundfish regulations as simple as possible, and to avoid impacts in non-groundfish fisheries, the PFMC and the Department have been reluctant to look toward establishing additional gear constraints for recreational groundfish fishing. Enforcement of selective gear provisions for certain fisheries like groundfish has proven difficult. In fact, as part of this rulemaking action, the Department is recommending the Commission eliminate certain gear constraints that presently apply for fishing in the California Rockfish Conservation Area because the rules proved to be confusing for the public and difficult for enforcement.

- F. Comment: *Applying the seasonal groundfish closures to shore-based and diving activities will have a negative economic impact on many counties along the north coast.*

Source: 12.

Response: The Department does not have precise information on economic impacts, however, the Department agrees that seasonal groundfish closures will have some degree of economic impact to businesses that provide tackle or equipment to shore-based anglers and divers, and there could be impacts to other businesses that provide services to fishermen. However, if shore-based closures were established, opportunities would continue to exist for other non-groundfish species, such as surfperch and halibut during the closed periods. Furthermore, regardless of the Commission's decision on the shore based and diving exceptions, seasonal closures established by the PFMC will close groundfish fishing to boat-based anglers for a duration of 2 to 6 months, depending on the location. Most of the state's recreational groundfish catches come from anglers that are fishing by boat.

- G. Comment: *The Department claims that the shore-based and spearfishing provision is difficult to enforce. I don't see how that can be, it seems quite obvious if a person is diving or not.*

Source: 23, 26, 28, 34, 38, and 39.

Response: Enforcement officers have reported difficulty with the exceptions to the closed seasons on several fronts. For example, when a skiff is returning to port during the closed season for groundfish, and there are fish aboard and scuba tanks and diving gear aboard, it is possible that the fish were legally taken while spearfishing. However, if there are rods



and reels aboard the boat as well, then it is equally possible that the fish were taken using hook and line gear. While present regulations require that if an angler wishes to take fish under the provision, he or she may only have spear or diving gear aboard, unless enforcement officers actually see the fish come aboard, it cannot be proven which method of take was actually used.

As a second example, someone may have a boat on a trailer connected to a vehicle, yet have groundfish in possession when he or she is checked by an officer. Unless the officer actually sees the fish come in aboard the vessel, an angler can claim to have taken the fish from shore. In summary, while the exceptions do provide continued opportunity for shore based anglers and divers year-round, these opportunities do somewhat undermine the effectiveness of the closed seasons for groundfish.

H. Comment: *Cut back on the commercial take.*

Source: 2, 5, 12, 24, and 47

Response: The proposed regulations relate to recreational take of groundfish. Commercial take of groundfish is beyond the scope of the proposals noticed with this Initial Statement of Reasons. Moreover, the authority to regulate commercial groundfish fisheries lies mainly with the PFMC, and for state waters, with the California state legislature. Other than for nearshore commercial groundfish fisheries, the Fish and Game Commission does not have management authority over the commercial fishery sector.

I. Comment: *Because both shore-based fishermen and divers are very limited as to where and how deep they can fish, I believe that the fish that they take can be replenished from nearby populations of fish.*

Source: 25

Response: The author's comment suggests that addressing potential problems with localized depletion was a goal of the proposed regulatory changes. While neither the PFMC or the Department can definitively say that localized depletion does or does not exist for groundfish stocks in certain areas, the management strategy that is employed by the PFMC is first and foremost to limit total harvest (i.e. by managing to OY levels) for all groundfish stocks to levels that are sustainable over the long term. Management measures for groundfish are not developed considering the harvest by particular fishing sectors in localized areas. Instead, bag limits, closed seasons, and regional management measures are employed to stay within allowable catch limits over broader geographic regions.

Replenishment-type concerns might more appropriately be addressed with management tools such as marine protected areas.

- J. Comment: *If enforcement is the real issue, then appoint part-time Deputies or seek volunteers that are deputized to enforce areas of coastline where they live.*

Source: 39

Response: The proposed regulations relate to recreational take of groundfish. Appointment of paid and/or volunteer enforcement personnel cannot be addressed in this rulemaking package.

- K. Comment: *I just want to be able to go to the beach with my kids and shoot a couple of perch for dinner.*

Source: 14

Response: Surfperch are not subject to seasonal groundfish closures, as they are not considered part of the federal groundfish complex. Fishing for surfperch is authorized year-round whether from the shore or from a boat.

- L. Comment: *The year-round shore-based and spearfishing exception should not apply to tank divers (i.e. those that use SCUBA gear). Tank divers are like fishing off a boat, and do not fit into the same category as shore fishermen and free divers. We take the young kids out during the calm winter months to shoot perch and other species. Greenling, cabezon and lingcod should be open year round as well.*

Source: 47

Response: The California Recreational Fisheries Survey (CRFS) does not differentiate between divers who use SCUBA gear and those that freedive. CRFS creel census samplers only record whether an angler used spear gear or hook and line or another geartype. Consequently, the Department would have no basis for creating regulations that differ between tank divers and free divers.

Regarding surfperch, these species are not subject to seasonal groundfish closures, as they are not considered part of the federal groundfish complex. Fishing for surfperch is authorized year-round whether from the shore or from a boat. Greenlings, cabezon and lingcod are all subject to seasonal closures for boat modes based on projections of take relative to their corresponding allowable harvest levels. As described in Response B

above, lingcod is also subject to a 4-month closure which applies to all fishing modes in order to protect the fish during the peak of their spawning activities.

- M. Comment: *Don't punish honest people just because a few bad apples are using the loophole for shore-based and spearfishing exceptions to fish for groundfish from their boats during the closed season.*

Source: 49

Response: Support for continuing the exception is noted.

- N. Comment: *Although enforcement staffing levels may be inadequate, that is not a reason to reduce public access to fishing opportunities. The shore-based exception should not be held ransom for this reason.*

Source: 50

Response: Support for continuing the exception is noted.

- O. Comment: *Suggests drafting the regulations which allow for the shore-based and spearfishing exceptions so that an individual cannot possess groundfish when he/she also has a boat in tow.*

Source: 51

Response: The speaker's proposal was not included as an option within the noticed regulatory text under consideration, and thus could not be acted upon at the adoption hearing.

### **Comments Received on other Elements of the Proposed Regulations**

- P. Comment: *It is wasteful to throw back canary and yelloweye rockfish because the fish die and float away. These species appear to be a common part of the "mix" of rockfish species taken. It seems more reasonable to allow retention of a limited number of these protected species to avoid the discard problem.*

Source: James Kincaid, e-mail dated September 11, 2006

Response: Both canary and yelloweye rockfish have been formally declared as overfished by the PFMCC. The Department is aware that some incidental take and discard mortality of these species is possible when any fishing is authorized. However, allowing any retention of these species

could result in harvest rates that exceed biologically allowable levels, even at a bag limit of one fish per person.

Alternatively, the PFMC and the Department have supported the use of depth-based management strategies to prevent the most adverse fishing impacts to these deeper-water shelf rockfish while allowing other fishing activities in shallower waters to continue during many months of the year. Because rockfish species commingle, there is no way to completely prevent some incidental take, short of prohibiting all fishing activity. However, the PFMC has determined from recent recreational catch data that the level of incidental discard mortality during open seasons is within allowable levels when fishing is, in fact, limited only to specified depths.

- Q. Comment: *Supports allowing ocean whitefish and California sheephead fishing in Southern California in January and February; months where scorpionfish is open and rockfish is closed. As more data comes in to quantify interactions with nearshore rockfish and as stocks improve, he requests this proposal to be reconsidered annually. Fishing opportunities are extremely limited in January and February.*

Source: Bob Fletcher - Sportfishing Association of California – Oral testimony at the Commission’s October 6, 2006 meeting.

Response: The Department has reviewed recreational catch data from both CPFV logbooks and CRFS, and has determined that neither ocean whitefish nor California sheephead can be cleanly targeted without resulting in considerable incidental take and discard of federally-managed rockfish. While the PFMC does not set seasons or establish any other management for these two species (as they are not federal groundfish), the Department and Commission have always considered these species as closely associated with rockfish and other groundfish. This policy has been reflected in the Commission’s regulations since 2001, as seasons and depth regulations for these species have mirrored those for groundfish.

In Southern California, the fishing season for groundfish in 2007 will be ten months, from March through December. Projections of recreational take would not allow for a 12-month season without exceeding allowable harvest levels. If ocean whitefish and California sheephead were to be opened in these two months, the effectiveness of the closed season for groundfish would be reduced, and there would be an increased chance that harvests of groundfish would exceed allowable levels.

Unlike ocean whitefish and California sheephead, recreational catch data suggest that California scorpionfish can be cleanly targeted, meaning that

only incidental levels of rockfish bycatch would occur in directed fishing activities for this species. Therefore, when stock assessment results in 2005 came back as favorable for California scorpionfish, the Department recommended “de-coupling” the seasons and depths for California scorpionfish from the other groundfish, in order to provide opportunity to more fully utilize this healthy stock. For 2007, fishing for California scorpionfish will be authorized in Southern California during all 12 months of the year.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:  
California Fish and Game Commission  
1416 Ninth Street  
Sacramento, California 95814

VIII. Location of Department files:

Department of Fish and Game  
1416 Ninth Street  
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change: No alternatives were identified.
- (b) No Change Alternative: Should the Commission select the No Change Alternative, there will be inconsistent state and federal recreational groundfish fishing regulations beginning in 2007, causing difficulty for enforcement within and outside of state waters.
- (c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Modifying the state's regulations to conform to new federal rules is proposed to aid enforcement and improve clarity and public understanding.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

A minor but unquantified positive economic impact is expected to result from extended recreational groundfish fishing seasons and allowable depths beginning in 2007. Expected beneficiaries would be tackle retailers and sportfishing businesses, and those businesses related to tourism or boating which may enjoy some indirect benefits of increased opportunities.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None.

- (f) Programs mandated on Local Agencies or School Districts:

None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None.

(h) Effect on Housing Costs:

None.

## **Updated Informative Digest/Policy Statement Overview**

At its June meeting, the Pacific Fishery Management Council (PFMC) adopted final harvest levels, specifications, and management measures for groundfish fishing in federal waters (3-200 miles) for 2007-2008. In order to make the State's regulations consistent with the new federal rules that will be established by NOAA Fisheries following the PFMC's actions, the Department requests the Commission act to amend its regulations regarding recreational groundfish fishing in State waters, within three miles of shore. The new federal rules will become effective on January 1, 2007. There are 90 species of federal groundfish that are subject to these federal rules; almost all of which occur off California.

California's recreational groundfish fishing regulations in Title 14, CCR include regulatory items that originate in the federal arena, as well as regulations established by the Commission for these same species. The state's groundfish fishing rules also contain regulations for other species that closely associate with federal groundfish. The three species or species groups that are not federal groundfish, but are managed by the state in accordance with the federal groundfish rules, include greenlings of the genus *Hexagrammos*, California sheephead, and ocean whitefish.

As an example of how the state regulations are structured, the PFMC establishes fishing seasons for federal groundfish, but sets a bag limit for only some of the federal groundfish species. In some cases, the Commission has established a bag limit for these species in addition to the season determined by the PFMC. However, for purposes of organizational simplicity and clarity for the public, the state's regulations combine all applicable rules for state waters, whether they are federal conformance items or not. Since Title 14 regulations are structured by species and fishing areas, the season and the bag limit for a particular species is embodied within the same section, regardless of whether the item is a "federal conformance" or a "Commission-initiated" regulation. The proposed recreational groundfish changes that the Department requests the Commission act on include both the conformance items and related items for these species that have previously been decided by the Commission.

### **1. New and Continuing State Groundfish Fishing Regulations Needed to Conform to Federal Regulations effective for 2007-2008**

The following items were adopted by the PFMC and will result in federal regulations that will be effective in waters 3-200 miles off the California coast. The Department recommends the Commission adopt regulations on these same items that would apply for state waters 0-3 miles offshore, so that there is consistency between state and federal regulations:



- Groundfish fishing seasons and depth limits were adopted for all areas off California (see Figure below). In every region but the North Region, the proposed new seasons and allowable fishing depths represent an increase in fishing opportunities for anglers targeting recreational groundfish. Fishing seasons and depth constraints are needed to reduce impacts on overfished stocks. The seasons and depth structures differ by region based on prior recreational catch information, which is used to estimate potential impacts.

## Recreational Groundfish Seasons by Region, 2007-2008

– = Closed to boat-based fishing for groundfish

Region	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
North Region	---	---	---	---	> 30 fm Closed							
North Central	---	---	---	---	---	> 30 fm Closed						---
South Central - Monterey	---	---	---	---	> 40 fm Closed							---
South Central - Morro Bay	---	---	---	---	> 40 fm Closed							---
South Region	---	---	> 60 fm Closed									

- Because of their overfished status, the proposed regulations would continue to prohibit retention of cowcod, canary and yelloweye rockfish at all times and in all areas.
- The 2-fish limit on lingcod would continue, with a minimum size limit of 24 inches. Slight changes to the lingcod season structure are also proposed.
- The proposed changes would allow for an increase in the daily bag limit for greenling to two fish, within the 10-fish aggregate limit for rockfish, cabezon and greenlings (the “RCG Complex”). Under current regulations, catches of greenling (all species of the genus *Hexagrammos*) in 2004 and 2005 only reached 74% and 41%, respectively, of the allowed recreational harvest in California of 34,200 pounds.

Results of a Department bag limit analysis indicate that increasing the greenling limit from 1 fish per angler to 2 fish per angler would allow more of the TAC to be taken, but should not result in the TAC being exceeded. Greenlings are taken

primarily by shore and private boat fishermen in Northern California. Increasing the bag limit would allow these fishermen to take home an extra greenling and potentially increase the chance of anglers attaining their 10-fish RCG bag limit.

- Daily recreational bag limits that are presently effective for all other species of federal groundfish were re-affirmed by the PFMC.
- Fishing opportunity for California scorpionfish would be allowed year-round in waters south of Point Conception, increasing the length of the 2006 open season by two months. In recent years, fishing for this species has been constrained to as few as three months per year. The proposed change is the result of favorable stock assessment results indicating the California scorpionfish stock can be more fully utilized than it was under a data-poor and thus precautionary management strategy.
- Exceptions to closed groundfish seasons and depth constraints that apply for Pacific sanddabs and some other species of flatfish are proposed to continue, along with the requirement that not more than 12 hooks that are size #2 or smaller be used to fish for these species during times and in areas where groundfish are closed.
- Slightly different regulations are proposed for starry flounder fishing as the result of a new stock assessment. While the stock appears to be healthy, because it has now been federally assessed, pursuant to the federal groundfish plan it no longer may be categorized with the “other flatfish” for which there is no management and no OY. Therefore, amendments to Section 1.91 are proposed in order to move starry flounder from the “other flatfish” category in subsection (a)(10) into the “federally-managed flatfish” category in **subsection (a)(9)**. The practical effect of the change in designations is that starry flounder would no longer be subject to the exception which allows them to be taken outside of groundfish fishing seasons, or in waters deeper than where groundfish fishing is authorized.
- Waters of the Cordell Bank (off Marin County) shallower than 100 fathoms in depth would continue to be closed to fishing for groundfish at all times.

## **2. Proposed State-Initiated Items to Continue**

The Department recommends the Commission continue existing regulations regarding the subject items that follow. The Department has determined that continuing these regulations is necessary 1) to achieve the federal Optimum Yields (OYs) within state waters, or alternatively, 2) that the regulation can be provided by the Commission as an exception to the federal rules, but will not jeopardize the attainment of the federal OYs in state waters. The federal OYs

are set based on the best available biological and fishery data for species or groups of species of groundfish.

These special rules for California differ from the federal rules and apply within state waters only:

- The Department recommends continued alignment of sport fishing seasons and depth constraints for ocean whitefish, California sheephead and all greenlings of the genus *Haxagrammos* with the federally-established seasons and depths for groundfish. These species are known to co-occur with groundfish, and if fishing were permitted for these species in times and areas where groundfish are closed, interactions with groundfish could risk attainment of OYs.
- The Department recommends continuing the exception for leopard shark fishing in several bays and harbors throughout California. The exception allows year-round fishing for this species in designated areas only. The Department has previously evaluated the possible impacts of allowing leopard shark fishing when groundfish fishing is closed, and has determined that there is negligible risk posed relative to attainment of OYs for overfished groundfish species in state waters.
- The Department recommends continuing the prohibition on recreational fishing for federal groundfish in waters less than 10 fathoms in depth around the Farallon Islands to minimize interactions with seabirds. The measure was adopted by the PFMC in 2004, but cannot be implemented by NOAA fisheries as the agency lacks jurisdiction in this area, since these are shallow-water areas that fall completely within 0-3 miles of shore (exclusively state waters). Therefore, the Department recommends the Commission continue to include the prohibition in its regulations.

### **3. Proposed State-Initiated Items to Discontinue**

The items in this grouping are not presently included in the federal regulations, and therefore, there was no action taken on them by the PFMC when it adopted the 2007-08 groundfish specifications. However, these items are presently included in the Commission's regulations in state waters regarding federal groundfish. The Department recommends the Commission discontinue each of them.

- The Department proposes the Commission repeal the Finfish Transit Permit requirement specified in sections 27.67 and 701, Title 14, CCR, to simplify regulations. The permit requirement was established in 2001 at a time when groundfish fishing seasons off California differed dramatically. The permit allows

sport fish that are legally taken in one Groundfish Management Area to be transported to an area that is closed to take and possession. Because the groundfish regulations are now fairly similar in all areas, the Department believes the permit requirement is no longer necessary when balanced against the costs to issue, enforce, and explain the permit requirement to the public and to recreational anglers.

- The Department also proposes elimination of existing gear restrictions that apply to fishing for all non-groundfish species in the California Rockfish Conservation Area, in order to simplify regulations and improve enforcement. Presently, regulations in Section 27.83, Title 14, CCR, require use of not more than one hook and six ounces of weight when fishing for non-groundfish species in times or areas where groundfish fishing is closed. There are also numerous exceptions provided to this rule. These regulations were originally established in order to ensure attainment of federal OYs in state waters, however, there are no corresponding federal rules that require such constraints. Because the regulation and the exceptions have proven confusing to the angling public and difficult to enforce, and because it is not apparent that the measure is needed to attain federal OYs in state waters, the Department proposes the Commission eliminate the requirement.

#### **4. Shore Based and Diver Exceptions – Commission Decision is Needed**

In prior years, the Commission has provided two other state-initiated exceptions to the federal rules that apply in California waters only (see item 2 above), based on public comments received at its discussion hearings. The exceptions allow for: 1) take and possession of federal groundfish during closed seasons when angling from shore; and 2) divers to take federal groundfish during the closed seasons while spearfishing so long as they do not have fishing gear other than spear gear aboard their vessel or watercraft.

The reasons that proponents have suggested these exceptions can be provided by the Commission without jeopardizing attainment of federal OYs has varied over the years, depending on which species or species groups are most constraining. The Commission has been receptive and established the exceptions each year, usually in the interest of providing some additional opportunity to shore anglers who have stressed that they wish to see longer fishing seasons instead of larger allowable bag limits. In previous years, the PFMF has set federal groundfish fishing seasons that were as short as four months in some areas of the state, while bag limits remained at high levels. This decision by the PFMF to maintain higher bag limits in trade for shorter seasons followed testimony from boat-based anglers who asserted that reduced bag limits would be cost-prohibitive, particularly for Commercial Passenger Fishing Vessels.

While the shore-based and diver exceptions provided by the Commission have afforded these sectors of the recreational fishery the additional opportunity they request, the Department is aware that the two exceptions are difficult to enforce, and add complexity to the groundfish regulations. Consequently, the provisions reduce the overall effectiveness of closed fishing seasons, which are established for the purpose of reducing impacts to overfished stocks. Furthermore, drafting the regulations with the precision needed to make them enforceable without opening additional loopholes has also proven difficult.

As a result, the Department requests that the Commission affirmatively decide if it wishes to continue with each of the exceptions to the recreational groundfish regulations for State waters, considering that the federally-established fishing seasons have increased to between six and ten months of the year depending on the location.

#### **5. Proposed Non-Substantive Changes for Clarity and Enforceability**

Additional organizational changes to Title 14 groundfish regulations are proposed to improve clarity and enforceability, based on public and Department-initiated comments on the existing regulatory language.

The proposed regulations would now be organized so that there is a separate section for each of six Groundfish Management Areas, where the specific seasons, depth constraints, special closures, special species restrictions and exceptions are defined that apply within that area (Proposed new sections 27.25 through 27.50). In previous years, regulations for all areas of the state have been lumped into the regulatory text of Section 27.82. The Department had received numerous comments that the Section was difficult for anglers to use, problematic for enforcement, and that it was not clear when certain provisions applied while others did not. Therefore, the proposed changes would split 27.82 into an all-purpose Section which includes the provisions that apply for all management areas (Section 27.20), and the six sections for each of the management areas that contain the specific season and depth regulations (sections 27.25 through 27.50).

In order for the sections of regulatory text regarding the groundfish management areas to appear in sequential order, the proposed regulatory amendments would relocate all groundfish management area regulations so that they commence with Section 27.20, under the heading of “Ocean Waters with Restricted Fishing.”

If adopted, the new Section 27.20 will contain all definitions, general provisions and the procedural rules that apply generally to groundfish fishing seasons, depth constraints, and the process for making changes to any of the groundfish

fishing regulations in-season. While there is some minor re-wording of these provisions proposed for clarity, there are no substantive changes proposed for these regulations (other than the changes made by the PFMC to the season structures and depth constraints). Regarding the present text of Section 27.20, which lists the Section's title, authority, and reference citations but contains no regulatory text (it was repealed in 2005), the title and authority/reference items would be repealed, and then the title, authority/reference and amended regulatory text of Section 27.82 would be substituted. Therefore, the proposed regulatory text shows that existing Section 27.82 has been both amended, and re-numbered.

Additionally, the remaining items listed in present regulations of sections 27.25, 27.30, 27.35, 27.40, 27.45 and 27.50 would be repealed and replaced with the groundfish season and depth regulations, special closures, and exceptions for the Northern Groundfish Management Area, the North-Central Groundfish Management Area, the Monterey South-Central Groundfish Management Area, The Morro Bay South-Central Groundfish Management Area, the Southern Groundfish Management Area, and the Cowcod Conservation Areas, respectively.

The proposed structural and organizational regulatory changes would also include amending and re-numbering the current regulations of Section 27.83, the California Rockfish Conservation Area (CRCA), to new Section 27.51. This change would allow the CRCA regulations to sequentially follow the management area regulations, which follows logically. The old title and authority/reference listings that presently appear for Section 27.51 would repeal.

The proposed amendments would also strike the remaining titles and authority/reference citations listed for sections 27.42, 27.52 and 27.53; so that the Groundfish Management Area and CRCA sections of the regulations can all appear in sequential order without interruption.

Additionally, prior versions of the Title 14 regulatory language applicable to groundfish fishing made only a general reference to "federal groundfish." While the 90 species of federal groundfish are defined in Section 1.91 of Title 14, and reference is made to this Section repeatedly in the current regulatory text, there still appears to be difficulty on the part of the angling public in understanding that the season and depth regulations generally apply to all 90 species.

Reports indicated that it was not intuitively obvious to anglers that some species of fish, such as some sharks, skates, and flatfish, are included in the definition of "federal groundfish", while other species are not. To address these concerns, the Department proposes adding new Title 14 sections for the remaining federal groundfish species that previously were not listed in a specific section. The addition of these sections is expected to improve clarity of the regulations that

apply for each particular species of federal groundfish, as follows:

- Section 28.48 would be added to clarify regulations that apply to the take and possession of Pacific sanddab, rock sole, sand sole, butter sole, curlfin sole, rex sole, and flathead sole.
- Section 28.49 would be added to clarify regulations that apply to the take and possession of Dover sole, English sole, Petrale sole, arrowtooth flounder, and starry flounder.
- Section 28.51 would be added to clarify regulations that apply to the take and possession of spiny dogfish and soupfin shark.
- Section 28.52 would be added to clarify regulations that apply to the take and possession of big skates, California skates, and longnose skates.
- Section 28.53 would be added to clarify regulations that apply to the take and possession of ratfish, rattails and codlings.
- Section 28.57 would be added to clarify regulations that apply to the take and possession of Pacific cod, Pacific whiting, sablefish, and thornyheads.

It is important to note that although the above new sections are proposed for addition, the substance of the regulations themselves is not “new”. In effect, there is no change to regulations presently established in Section 27.82 that govern take and possession of these species. However, listing the species in specific sections is consistent with the organization of existing regulations for other federal groundfish and associated species. See: California sheephead (Section 28.26), lingcod (Section 28.27), cabezon (Section 28.28), greenlings (Section 28.29), California scorpionfish (Section 28.54), rockfish (Section 28.55) leopard shark (Section 28.56), and ocean whitefish (Section 28.58).

Two minor modifications have been made to the originally proposed language of the Initial Statement of Reasons, as described below.

1. Proposed new sections 27.25, 27.30, 27.35, 27.40, 27.45, and 27.50 specify area-specific regulations for each of six Groundfish Management Areas. In each of these sections, subsection (b) specifies the fishing seasons and depth constraints that apply within each area, while subsection (c) of each section provides some special exceptions to these seasons and depth constraints. In order to make more clear to the reader that exceptions to subsection (b) exist in regulations that follow, the phrase “except as provided in subsection (c) below” was added to the language in subsection (b) of each of these sections. The additional phrase should add to clarity and understanding and reduce confusion on the part of the reader.

2. Proposed new sections 27.25, 27.30, 27.35, 27.40, 27.45, 27.50 and 28.48 specify the allowable fishing gear for “other flatfish”, including Pacific sanddabs, when anglers are fishing in times, areas or depths that are otherwise closed to

groundfish fishing. The noticed regulatory text states that only hooks of size No. 2 or smaller may be used in these situations. The text then provides a definition for a No. 2 hook. In order to be consistent with language used in the inland sportfishing regulations of Title 14 to describe hook sizes, the regulatory text was modified to read that "A No. 2 hook means a fishing hook with a gap not greater than 7/16 inch between the hook point and the shank." Conversely, the presently-noticed regulatory text states that the gap size may be not more than 7/16 inch "at its closest point". The two definitions differ only in the words used, but there is no practical difference between them in the field. The Department therefore believes the change to be only technical in nature, and therefore not substantive.

**A third minor change was made to the originally proposed language of the Initial Statement of Reasons, as described below.**

**3. The proposed regulatory text in sections 28.26, 28.27, 28.28, 28.29, 28.48, 28.49, 28.51, 28.52, 28.53, 28.54, 28.55, 28.56, 28.57 and 28.58, reading "Take and possession is authorized only as follows, and is otherwise unlawful:" is replaced with the following text: "Take and possession is authorized as follows:"**

**The reason for this change is to allow the exceptions to the closed seasons provided for shore-based anglers and divers contained in sections 27.20 through 27.50 to apply as intended. The present language in sections 28.26, 28.27, 28.28, 28.29, 28.48, 28.49, 28.51, 28.52, 28.53, 28.54, 28.55, 28.56, 28.57 and 28.58 could be misinterpreted by the reader to mean that no exceptions to the closed seasons exist, yet meanwhile they are expressly provided for in sections 27.20 through 27.50. At the adoption hearing, the Commission re-affirmed that the shore-based and diver exceptions shall continue to apply. The proposed clarifying change should alleviate any potential confusion on this point.**

**At its November 3, 2006 meeting, the Commission approved the proposed regulatory amendments to the recreational groundfish fishing regulations. Additionally, the Commission selected to re-affirm the exceptions to the closed seasons for shore-based and spear anglers, allowing them year-round fishing opportunities for groundfish species. Minor editorial changes were made to improve the clarity of the regulations.**